

## **FINAL PRIVATE LETTER RULING**

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### **REQUEST LETTER**

09-002 Supp.

November 10, 2008

Private Letter Ruling Commissioners  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City UT 84134

Re: Request for Private Letter Ruling clarification pertaining to Public Relations, Advertising/Marketing Firms, Media Buying, PowerPoint Presentations, Creative Design/Graphic Artists and Web Site Design/Programming

To: Whom It May Concern,

Request is being made for rulings regarding when sales and use tax is applicable and/or due under the circumstances described below.

- 1) Public Relations labor retainers. Is the consulting time for planning, management, execution and reporting of all public relations activities on behalf of a client taxable? This could include coordinating press releases, articles, etc. and distribution to many types of media. Pitching and coordinating interviews with media, or coordinating media events for clients to participate in.
- 2) Advertising/Marketing labor retainers. Is the consulting time for account management on behalf of a client taxable? This could include strategic planning, consulting, client/staff meetings, project coordination, senior account management, agency/marketing labor and production coordination/management.
- 3) Media buying. Is the time spent to research, analyze, compile and present a media plan to a client taxable. This could consist of contacting media representatives, negotiating rates and placement, placing schedules and managing ad materials and deadlines.
- 4) Design and Production. Is the design and production time spent to conceptualize and create logo designs, advertising materials, packaging, label designs, etc. taxable? This could include packaging design, copywriting, editing, art direction/design, photography and final art production. This does not include a printing piece or any type of collateral or finished product.
- 5) Web site design. Is the time to conceptualize, design, program or maintain a website taxable?

- 6) PowerPoint presentations. If we conceptualize, design and create a PowerPoint presentation for a client, is that taxable? Does it make difference if we submit to them via the Internet or hand them a disk?

All of the above questions only pertain to labor or time spent on behalf of a client. I understand that printing a final piece would translate to a tangible product and therefore would be taxable. As you can see from all of my questions, the Utah State Sales Tax Code does not always clearly define answers to our questions. If you could please answer the above questions specifically by number and not a general overall answer to the questions it would be greatly appreciated. We just want to make sure that we are taxing the required items but not overtaxing our clients. Please call for any clarification or explanation. We would like to get a quick response to this request.

Sincerely,

NAME

TITLE

COMPANY

ADDRESS

CITY, STATE ZIP CODE

PHONE NUMBER

## RESPONSE LETTER

November 17, 2011

NAME  
COMPANY  
ADDRESS  
CITY, STATE ZIP CODE

RE: Private Letter Ruling Request—Sales and Use Tax Treatment of Services Provided by Company to Utah Customers.

Dear NAME:

Your company, COMPANY (“COMPANY”), has requested a ruling as to the sales and use tax treatment of certain services that it provides. You have enumerated six circumstances. In our letter dated August 17, 2009, we previously ruled on your first five circumstances and found them to be not subject to Utah sales tax, but still subject to use tax on the cost of materials and supplies consumed in providing the services. In this letter, we rule that for your sixth circumstance your sales of PowerPoint presentations to Utah customers are subject to Utah sales tax. We apologize for the delay in our response for this final area. Below, we will first introduce the applicable law and then provide our analysis.

### Applicable Law

Utah Code Ann. § 59-12-103 imposes a sales tax on certain transactions as set forth below in pertinent part:

- (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:
  - (a) retail sales of tangible personal property made within the state;  
. . . .
  - (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
    - (i) stored;
    - (ii) used; or
    - (iii) consumed; and
  - (m) amounts paid or charged for a sale:
    - (i) (A) of a product transferred electronically; or
    - (B) of a repair or renovation of a product transferred electronically; and
    - (ii) regardless of whether the sale provides:
      - (A) a right of permanent use of the product; or

- (B) a right to use the product that is less than a permanent use, including a right:
  - (I) for a definite or specified length of time; and
  - (II) that terminates upon the occurrence of a condition.

Utah Code Ann. § 59-12-102(83) defines a product transferred electronically as follows:

- (a) Except as provided in Subsection (83)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.
- (b) "Product transferred electronically" does not include:
  - (i) an ancillary service;
  - (ii) computer software; or
  - (iii) a telecommunications service.

Utah Code Ann. § 59-12-102(25) defines computer software as follows:

"Computer software" means a set of coded instructions designed to cause:

- (a) a computer to perform a task; or
- (b) automatic data processing equipment to perform a task.

Utah Code Ann. § 59-12-104(25) provides an exemption from Utah sales and use tax for the following:

[A] product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product . . .

Utah Code Ann. § 59-12-211 states how transactions are to be sourced. In subsection (2), the code states in part:

[I]f tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is received by a purchaser at a business location of a seller, the location of the transaction is the business location of the seller.

### Analysis

For your sixth circumstance, you asked the following questions:

**6. PowerPoint presentations. If we conceptualize, design and create a PowerPoint presentation for a client, is that taxable? Does it make difference if we submit to them via the Internet or hand them a disk?**

In a follow-up telephone conversation, you provided the following additional details. About two or three times a year, you prepare PowerPoint presentations for clients who are usually located outside of Utah. You transfer the presentations to them by disk or email, and you bill for the presentations separately. Your clients use the presentations to teach their distributors about your clients' products. Most presentations are basic. Typically, they include 20 to 30 slides with a few bullet points per slide. Sometimes, you insert logos. Clients hire you because you understand the PowerPoint software better than they do, so you can include features such as slide transitions much more quickly and easily than your clients could. Generally, when you prepare a presentation, you meet with a client once or twice by telephone or in person to learn what she wants. She may also supply documents about the product. From those meetings and documents, you write the bullet points and prepare the presentation. If a client's documents are extensive and the information needs to be narrowed way down, your copywriter will prepare the bullet points. Other times, the client may provide you the bullet points and ask you to fix up the presentation and make it look good. You view the presentations as similar to, but less detailed than, the website designs. You have not described a case in which your customer gives you a PowerPoint presentation file and asks you to fix it up. Thus, we infer that you are creating new PowerPoint presentations rather than revising your clients' PowerPoint presentation drafts.

A PowerPoint presentation file is either tangible personal property or a product transferred electronically. The taxability of a PowerPoint presentation file does not vary based on how it is transferred to the customer. Similar to a website, a PowerPoint presentation file is created using design or other services along with content. For transactions of this nature, we must consider whether the object of the transaction is the sale of the tangible personal property/product transferred electronically (the PowerPoint presentation file) or the sale of the services used to create the property.<sup>1</sup>

The Utah Supreme Court has provided the following guidance on the object or essence of a transaction:

[T]he essence of the transaction theory focuses on the nature of what was sold and whether it primarily entails tangible personal property. . . . This theory examines the transaction as a whole to determine whether the essence of the transaction is one for services or for tangible personal property. The analysis typically requires a determination either that the services provided are merely incidental to an essentially personal property transaction or that the property provided is merely incidental to an essentially service transaction.

*B.J.-Titan Services v. State Tax Comm'n*, 842 P.2d 822, 825 (Utah 1992).

After considering the characteristics of PowerPoint presentations in general, the Commission concludes that the object of the transaction for the sales of all PowerPoint presentation files is the computer files, not the design or other services utilized in creating the files. A PowerPoint presentation is analogous to a set of visual aids for a speaker. Thus, the

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<sup>1</sup> Utah Admin. Code R865-19S-111 and R865-19S-92 also show that the object of the transaction analysis applies when design services and computer-generated outputs are involved.

Commission finds that the sale of a PowerPoint presentation file is the sale of property, not the sale of a service.

The taxability of your sales of PowerPoint presentation files differs from that of your websites because the websites are more complex. The websites appear to involve more of your design and other services. Thus, we concluded that the object of the transaction for your websites is the sales of your company's services not the sales of the websites themselves.

Your sales of PowerPoint presentations are subject to Utah sales tax if these sales are sourced to Utah according to § 59-12-211. Under this statute, transactions are typically sourced based on the locations of the customers. You stated that your clients are usually located outside of Utah. Thus, under § 59-12-211, your sales of PowerPoint presentations to these customers are very likely sourced outside of Utah and not subject to Utah sales tax. However, for your customers in Utah, your sales to these customers would be sourced to Utah and would be subject to Utah sales tax. The Commission makes no conclusions about whether your sales are subject to tax by other states under their laws.

For all of your sales of PowerPoint presentations, you would qualify for the resale exemption found in § 59-12-104(25) for the cost of materials and supplies that are an ingredient or component of the PowerPoint presentations sold. For more information about how to correctly source your sales or claim the resale exemption, please contact the Taxpayer Services Division at 1-800-662-4335.

We have considered our prior rulings and decisions in making this decision on PowerPoint presentations. Your ruling is consistent with Appeal 04-1387 and distinguishable from PLR 04-005. In Appeal 04-1387 based on that case's facts, the Commission found the following:

[T]he new PowerPoint presentation transactions are subject to sales tax as the object of the sale is the product, not the service. The transactions where Petitioner merely edited and added graphics to a PowerPoint draft, which had been previously prepared by a [customer company's] employee, are not subject to tax as the object of this sale is the service.

Appeal 04-1387 is consistent with this private letter ruling in that we find your sales of PowerPoint presentations, created by you, are sales of property. You have not indicated that you receive and edit PowerPoint presentation files you receive from your customers. In PLR 04-005, the Commission found that a seller editing and revising PowerPoint presentation files created by a customer was providing nontaxable services. Your situation is distinguishable because you are creating new PowerPoint presentations, not just editing and revision the presentations as the seller in PLR 04-005 was.

The Commission finds that prospective enforcement of Utah sales tax collection is appropriate for your sales of PowerPoint presentations. Thus, as of the date of this letter, you are obligated to collect Utah sales tax on your sales of PowerPoint presentations to Utah customers.

## Conclusion

Based on the above analysis, your sixth circumstance is subject to Utah sales tax for your sales of PowerPoint presentations to Utah customers. Your sales of PowerPoint presentations delivered to out-of-state customers are not subject to Utah sales tax. However, the Commission makes no conclusions about whether such sales are subject to tax by other states under their laws. Furthermore, for the sales of the presentations, you qualify for the resale exemption from Utah sales and use tax on the cost of materials and supplies that become a component part of the presentations sold. Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/aln  
09-002 Supp.